

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #10	CCRB Case #: 201806504	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/29/2018 6:33 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 1/29/2020	EO SOL 1/29/2020	
Date/Time CV Reported Sun, 07/29/2018 11:09 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/09/2018 11:15 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jeffrey Brown	00299	961500	042 PCT
2. POM David Johnson	10132	956776	042 PCT
3. POM Victor Gonzalezhernandez	05280	958650	042 PCT
4. An officer			042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jairo Asilis	19790	958268	042 PCT
2. SGT Alexander Velasquez	4729	942659	042 PCT
3. POM Michael Breeding	14616	955768	042 PCT
4. POM Harold Borden	25960	963877	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown threatened to arrest § 87(2)(b)	
B.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown threatened to arrest an individual.	
C.POM David Johnson	Abuse: Police Officer David Johnson threatened to arrest § 87(2)(b)	
D.POM David Johnson	Abuse: Police Officer David Johnson threatened to arrest an individual.	
E.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown threatened to damage § 87(2)(b)'s property.	
F.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown threatened to damage an individual's property.	
G.POM David Johnson	Abuse: Police Officer David Johnson entered § 87(2)(b) in the Bronx.	
H.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown entered § 87(2)(b) in the Bronx.	
I.POM David Johnson	Force: Police Officer David Johnson used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Jeffrey Brown	Force: Police Officer Jeffrey Brown used physical force against § 87(2)(b)	
K.POM David Johnson	Force: Police Officer David Johnson used physical force against § 87(2)(b)	
L. An officer	Discourtesy: An officer spoke discourteously to an individual.	
M.POM Victor Gonzalezhernandez	Force: Police Officer Victor Gonzalez-Hernandez used physical force against § 87(2)(b)	
N. An officer	Force: An officer used physical force against § 87(2)(b)	
O.POM David Johnson	Abuse: Police Officer David Johnson failed to obtain language interpretation services for § 87(2)(b)	
P.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown failed to obtain language interpretation services for § 87(2)(b)	
Q.POM David Johnson	Abuse: Police Officer David Johnson failed to obtain language interpretation services for § 87(2)(b)	
R.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown failed to obtain language interpretation services for § 87(2)(b)	
S.POM David Johnson	Abuse: Police Officer David Johnson failed to obtain language interpretation services for an individual.	
T.POM Jeffrey Brown	Abuse: Police Officer Jeffrey Brown failed to obtain language interpretation services for an individual.	

Case Summary

On July 29, 2018, § 87(2)(b) filed this complaint with the Internal Affairs Bureau (IAB). This complaint was received at the CCRB on August 9, 2018, under IAB log number 18-30507.

On July 29, 2018, at approximately 6:33 p.m., § 87(2)(b) was in front of § 87(2)(b) in the Bronx, when his brother, § 87(2)(b) allegedly pushed his neighbor, § 87(2)(b) contacted 911 and PO David Johnson and PO Jeffrey Brown of the 42nd Precinct responded to the call. While at the incident location, PO Johnson observed § 87(2)(b) push another civilian and requested his identification. § 87(2)(b) did not provide his identification and entered his apartment. PO Johnson and PO Brown followed him to the second floor of the house, where they were joined by § 87(2)(b) and an unknown female. PO Brown told § 87(2)(b) and the female that if he did not get § 87(2)(b)'s identification, "somebody" was going to be arrested and both PO Johnson and PO Brown took out and displayed their handcuffs (**Allegations A, B, C, and D: Abuse of Authority - Threat of arrest**, § 87(2)(g)). PO Brown also threatened § 87(2)(b) and the female with breaking the apartment door (**Allegation E and F: Abuse of Authority – Threat of Property Damage**, § 87(2)(g)).

When § 87(2)(b) opened the apartment door, PO Johnson and PO Brown entered his apartment (**Allegations G and H: Abuse of Authority – Entry of Premises**, § 87(2)(g)). PO Johnson and PO Brown allegedly tripped § 87(2)(b) to the ground and PO Johnson allegedly pressed his knee against his back (**Allegations I and J: Force – Physical Force**, § 87(2)(g)). PO Johnson also allegedly kned § 87(2)(b) in the eye, resulting in a laceration, swelling, and bleeding (**Allegation K: Force – Physical Force**, § 87(2)(g)). While § 87(2)(b) was on the ground, PO Johnson or PO Brown told an unknown individual in the apartment, "Don't fucking touch me" (**Allegation L: Discourtesy - Word**, § 87(2)(g)). Other officers from the 42nd Precinct, including PO Victor Gonzalez-Hernandez, PO Jairo Asilis, Sgt. Alexander Velasquez, PO Michael Breeding, PO Harold Borden arrived on scene and assisted in taking § 87(2)(b) into custody. While assisting PO Johnson and PO Brown, PO Gonzalez-Hernandez pushed § 87(2)(b) away from § 87(2)(b) (**Allegation M: Force -Physical Force**, § 87(2)(g)). As § 87(2)(b) resisted being picked up from the ground, PO Johnson and PO Brown forcefully lifted him up by holding onto his arms, which resulted in bruising of his left triceps (within **Allegations I and J Force – Physical Force**, § 87(2)(g)).

PO Brown escorted § 87(2)(b) out of the apartment and to the backseat of his marked SUV. § 87(2)(b) suddenly exited the police vehicle and began yelling and was pushed back into the vehicle by an unknown officer (**Allegation N: Force -Physical Force**, § 87(2)(g)). Throughout the incident, PO Johnson and PO Brown failed to obtain language interpretation services for § 87(2)(b) and the female victim (**Allegations O, P, Q, R, S, and T: Abuse of Authority -Failure to obtain Language Interpretation Services**, § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b), and he was transported to § 87(2)(b) for his injuries. Later in the incident, another wanted individual was also mentioned on the UF-61, but no arrests were listed for § 87(2)(b) and it is unclear whether he was taken into custody during the incident (**Board Review 39**).

Body Worn Camera (BWC) recordings of the incident were obtained from the BWCs of PO Johnson (**Board Review 01 and 02**), PO Victor Gonzalez-Hernandez (**Board Review 03**), PO Jairo Asilis (**Board Review 04**), Sgt. Alexander Velasquez (**Board Review 05**), PO Michael Breeding (**Board Review 06**) and PO Harold Borden (**Board Review 07 and 08**) of the 42nd

Precinct. PO Brown noted in his memo book that his BWC was not working during this incident

§ 87(2)(g)

Findings and Recommendations

Allegation A: Abuse of Authority – Police Officer Jeffrey Brown threatened to arrest § 87(2)(b)

Allegation B: Abuse of Authority – Police Officer Jeffrey Brown threatened to arrest

§ 87(2)(b)

Allegation C: Abuse of Authority – Police Officer David Johnson threatened to arrest § 87(2)(b)

Allegation D: Abuse of Authority – Police Officer David Johnson threatened to arrest

§ 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were not present for this portion of the incident. (Board Review 09 and 10).

§ 87(2)(b) and the female victim left the country and were not available to the investigation.

Upon reviewing PO Johnson's first BWC video, at 04:08, as PO Johnson's BWC camera faces the adult female and a young child standing by the entrance to the house, PO Johnson asks the female, "You guys understand what we're saying?" The female repeatedly replies, "We speak Romanian," and the child replies, "Yeah." PO Johnson then instructs the child in English, "You understand? Tell her what I'm saying about ID." The child can be heard speaking Romanian to the female in front of PO Johnson. The female replies to the child in the same language.

At 06:15, PO Johnson stops in front of a white door on the second floor of the house, and PO Brown, who is on his right, can be seen holding handcuffs in his right hand. At the same time, PO Johnson states, "figure it out, I want ID, I'm not playing games. I want ID right now."

At 06:24, § 87(2)(b) tells PO Johnson and PO Brown, "Excuse me" with a thick accent, and moves in front of the apartment door. As he attempts to speak to the officers in English, PO Brown can be heard telling him, "Do you understand what I'm saying about ID? ID now." At the same time the female, who is not captured in the frame of PO Johnson's camera, attempts to speak to PO Brown in Romanian. At 06:38 minutes, PO Brown tells the female, "Give him the ID" and PO Johnson can be seen showing handcuffs to § 87(2)(b) in front of the door, while stating, "Listen, give me an ID right now." At the same time, PO Brown states, "ID or someone's getting arrested." PO Brown can also be heard stating, "...going back to the precinct." PO Johnson once again states, "Give me the ID." The female dressed in pink moves toward the apartment door, and while looking toward PO Brown, replies, "I give you ID now." PO Brown replies to the female, "Give me his ID, his ID, I want his ID" (Board Review 01).

In his initial statement, PO Brown did not remember whether he showed his handcuffs to any civilians while attempting to retrieve § 87(2)(b)'s ID. He denied stating, "ID or somebody's getting arrested" to any civilians at the incident location and did not threaten them with arrest. PO Brown did not remember whether there was any indication that other civilians at the incident location, including § 87(2)(b) were in possession of § 87(2)(b)'s ID, and said they could not be arrested for any offenses at this point in the incident (Board Review 12). During his second CCRB interview, PO Brown was shown portions of PO Johnson's BWC recording and he acknowledged displaying his handcuffs while speaking to § 87(2)(b) and the unknown female in front of § 87(2)(b)'s apartment door. He explained that he took out the handcuffs to place § 87(2)(b) in custody, but confirmed that, at the time, § 87(2)(b) was inside of his apartment behind a closed door. PO Brown also acknowledged telling § 87(2)(b) and the unknown female that "someone" was going to be arrested if he did not obtain § 87(2)(b)'s identification. PO Brown stated that while he directed this statement at § 87(2)(b) and the unknown female, he was

speaking about § 87(2)(b) PO Brown did not intend to arrest § 87(2)(b) and the unknown female, and the officers were only pursuing § 87(2)(b) **(Board Review 15).**

PO Johnson did not recall whether he or PO Brown showed their handcuffs to civilians inside or whether PO Brown verbally threatened to arrest them. After watching relevant portions of his BWC recording, PO Johnson acknowledged that he and PO Brown showed handcuffs to § 87(2)(b) and the unknown female at § 87(2)(b)'s apartment door, however, he did not remember the reason behind it. PO Johnson also confirmed that PO Brown informed § 87(2)(b) and the unknown female that if he did not receive § 87(2)(b)'s identification, "someone" was going to be arrested. PO Johnson stated that other civilians' identification was not requested, and that they were not suspected of any criminality at this point in the incident. PO Johnson also noted that when he initially approached § 87(2)(b) informed him that his ID was inside of the apartment **(Board Review 11).**

It is undisputed that PO Brown and PO Johnson displayed their handcuffs while speaking with § 87(2)(b) and the unknown female about obtaining § 87(2)(b)'s identification, and that PO Brown stated to them that "someone" was going to be arrested if he did not receive § 87(2)(b)'s ID.

PO Brown and PO Johnson said that § 87(2)(b) and the unknown female were not suspected of any criminal activity or believed to be in possession of § 87(2)(b)'s ID at the time the alleged threats were made. PO Brown and PO Johnson also denied threatening to arrest § 87(2)(b) or the unknown female and PO Brown explained that his statement that "someone" was going to be arrested was directed toward § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Penal Law sub section 195.05 says that a person is guilty of Obstructing Governmental Administration when they intentionally obstruct, impair, or pervert the administration of law or other governmental function or prevent or attempts to prevent a public servant from performing an official function by means of intimidation, physical force, or interference. **(Board Review 16)**

§ 87(2)(g)

Allegation E: Abuse of Authority – Police Officer Jeffrey Brown threatened to damage § 87(2)(b)'s property.

Allegation F: Abuse of Authority – Police Officer Jeffrey Brown threatened to damage § 87(2)(b)'s property.

Allegation G: Abuse of Authority – Police Officer David Johnson entered § 87(2)(b) in the Bronx.

Allegation H: Abuse of Authority – Police Officer Jeffrey Brown entered § 87(2)(b) in the Bronx.

§ 87(2)(b) said that prior to entering the apartment, § 87(2)(b) instructed him in Romanian to go inside and close and lock the door. § 87(2)(b) told him that he would handle the officers himself. § 87(2)(b) stated that after he found his ID inside of the apartment, he slightly opened the apartment door and peaked out into the hallway. At the same time, PO Johnson placed both of his hands on the door and pushed it open. PO

Johnson then entered § 87(2)(b)'s apartment and PO Brown followed him inside. § 87(2)(b) did not know whether any of the civilians on scene gave PO Johnson and PO Brown permission to enter his apartment (**Board Review 09**).

§ 87(2)(b) said that § 87(2)(b) pushed her, but § 87(2)(b) was acting aggressively during the incident and she did not point out who pushed her to the officers (**Board Review 10**). In § 87(2)(b)'s two 911 calls, she told the operator that she was pushed by a white male, 6' tall, and wearing a white shirt. She also mentioned that individuals at the location were intoxicated and fighting and yelling can be heard in the background (**Board Review 13, 40, and 43**).

§ 87(2)(b) and the female victim left the country and were not available to the investigation.

Upon reviewing PO Johnson's first BWC video, at 02:40 minutes, a male can be heard shouting. PO Johnson then walks over to PO Brown, who is in the front yard, and he pushes § 87(2)(b) away from PO Brown with his left hand as he tells him to "calm down." At this point, § 87(2)(b) who is shouting in Romanian, is being pushed toward the house by a female dressed in a pink-stripe shirt. At 03:04 minutes, PO Johnson repeatedly asks the female whether § 87(2)(b) has "ID." The female tries to answer PO Johnson in Romanian. When PO Johnson asks whether § 87(2)(b) has ID, § 87(2)(b) replied, "no." § 87(2)(b) speaks with a heavy accent and gestures with his hands while speaking as he stands directly in front of PO Johnson. He then takes a few steps toward the house, and can be seen being pushed toward the front door by § 87(2)(b). At 03:51 minutes, as § 87(2)(b) can be seen entering the house and standing in its doorway, PO Johnson says he wants § 87(2)(b)'s ID to the female and § 87(2)(b).

At 04:08, as PO Johnson's BWC camera faces the female and a child standing by the entrance to the house, PO Johnson asks the female, "You guys understand what we're saying?" The female repeatedly replies, "We speak Romanian," and the child replies, "Yeah." PO Johnson then instructs the child in English, "You understand? Tell her what I'm saying about ID." The child can be heard speaking Romanian to the female. The female replies to the child in the same language. At 04:31, § 87(2)(b) refuses to give his ID to PO Johnson twice. PO Johnson then asks nearby civilians, "Why is he yelling in my face?" as § 87(2)(b) speaks in an elevated tone and moves his hands directly in front of PO Johnson's BWC.

At 04:50, § 87(2)(b) can be seen moving his hand toward PO Johnson's BWC, and asks, "Is the camera ok?" PO Johnson moves his hand in front of his chest and states to § 87(2)(b) "Don't touch me. Don't touch me." As § 87(2)(b) continues to speak to PO Johnson in an elevated tone about his ID being requested, PO Johnson informs § 87(2)(b) that he is being excessively loud. At this point, § 87(2)(b) begins screaming toward PO Johnson's BWC while pointing at it with his fingers. At 05:38 minutes, PO Johnson can be heard stating, "I'm gonna taking him back to the precinct. ID or the precinct, one or the other. " At this point § 87(2)(b) stops screaming for a brief moment, and begins speaking loudly in Romanian while pointing his finger.

§ 87(2)(b) again refuses to give his ID and the female pushes him inside of the doorway. § 87(2)(b) can be seen running up the stairs of the house, while PO Johnson moves closer toward the front door of the house, and states, "No, I want ID." As PO Johnson repeatedly states, "Don't touch me" to the young male, the female, who is standing outside of the house, states in English, "One moment, one moment please." As PO Johnson walks through the door of the house and enters the hallway, the young male, moves to PO Johnson's left while stating "open door" and gestures toward the stairs with his hand. While approaching the stairs, PO Johnson states, "I want ID" and § 87(2)(b) who is not visible in the recording, mentions the word "ID" and adds, "You come." As PO Johnson walks up the stairs, he says, "I'm not playing around."

At 06:15, PO Johnson stops in front of a white door on the second floor of the house, and PO Brown, who is on his right, can be seen holding handcuffs in his right hand. At the same time, PO Johnson states, "figure it out, I want ID, I'm not playing games. I want ID right now." At 06:24, § 87(2)(b) tells the officers "Excuse me" with a thick accent, and moves in front of the apartment door. As he attempts to speak to the officers in English, PO Brown can be heard telling him, "Do you understand what I'm saying about ID? ID now!" At the same time the female, who is not captured in the frame of PO Johnson's camera, attempts to speak to PO Brown in Romanian. At 06:38 minutes, PO Brown tells the female, "give him the ID" and PO Johnson shows handcuffs to § 87(2)(b) while stating, "Listen, give me an ID right now." At the same time, PO Brown states, "ID or someone's getting arrested." The female moves toward the apartment door, and while looking toward PO Brown and replies, "I give you ID now." The female begins speaking in Romanian and enters the apartment.

As the female opens the door and enters the apartment, § 87(2)(b) can be seen inside of the apartment, directly behind its front door. § 87(2)(b) states to the officers, "For me never" and closes the apartment door. At the same time, § 87(2)(b) tells the officers, "One moment. I give you." § 87(2)(b) can be heard yelling from inside of the apartment, "My ID never!"

At 06:54 minutes, § 87(2)(b) repeatedly states, "Por favor" to PO Johnson, and PO Johnson answers him, "I don't care. I don't wanna hear it man." PO Brown asks § 87(2)(b) "What's going on? Just give me the identification, that's it." As § 87(2)(b) again states, "Por favor," PO Johnson replies, "Now we're gonna get more people to come here. We're gonna get more cops to come here." At this point, § 87(2)(b) replies in English while pointing with his hand behind him, in the direction of the apartment door, "Okay, go and the..." At 07:16, PO Brown taps § 87(2)(b) on the shoulder and states to him, "Listen, it's somebody's birthday right now... Not to ruin his birthday, but we'll start kicking down his doors." At 07:27, § 87(2)(b) replies to PO Brown in Spanish, "Do you speak Spanish? I don't understand much Spanish." At 7:30 minutes, the female exits the apartment and positions herself behind § 87(2)(b). PO Brown could be heard telling the female, "His ID, his ID" while pointing toward the door. As the female points to herself and appears confused, PO Johnson begins yelling, "His ID! That's why we're here." The female and the male being speaking to each other in Romanian, and § 87(2)(b) states in a low tone of voice, "come, come." The female then turns toward the door and § 87(2)(b) opens it all way. At 07:58 minutes, the female turns toward PO Brown, who is not captured in the frame of the recording, and speaks to him. What she says is not clear, but she is heard saying the words, "come now" and "ID." At 08:00 minutes, PO Johnson quickly moves toward the front door of the apartment, and states, "What are you doing man!" to an unspecified party. At the same time, § 87(2)(b) can be seen standing inside of the apartment, right past the threshold. His right hand is positioned on the door and his right, on the frame of the door. PO Johnson enters the apartment and the recording stops (**Board Review 01**).

PO Brown stated that he asked the female for permission to enter the house and she, without saying anything, held the door open for the officers. PO Brown interpreted this action as non-verbal consent. He added however, that once § 87(2)(b) opened his apartment door, the female prevented officers from entering the apartment by standing in their way. PO Brown and PO Johnson asked the female for permission to enter the apartment, but did not receive it. PO Brown acknowledged threatening § 87(2)(b) and the female with breaking § 87(2)(b)'s apartment door and explained that officers are required to have ESU breach a door when an intoxicated or emotionally disturbed person is in an apartment. PO Brown and PO Johnson eventually entered the apartment because they needed to retrieve § 87(2)(b)'s ID to investigate the harassment allegation made by § 87(2)(b) and because § 87(2)(b) was intoxicated and could not care for himself and was, "probably a harm to himself and others." PO Brown clarified that he did not intend to arrest § 87(2)(b) upon

entering his apartment, but needed to take § 87(2)(b) to the hospital because he was intoxicated, he did not listen to the officers' verbal commands, and because he behaved irrationally by preventing § 87(2)(b) from entering the house. § 87(2)(b) was not verbally or physically threatening with anyone at the incident location, beyond pushing a civilian. PO Brown could not hear § 87(2)(b) while he was inside of his apartment, did not know what he was doing inside, or whether he had any weapons (**Board Review 12**).

PO Johnson stated that while he spoke with the female in the front yard, she stated to him in clear English, "You can come into the house." PO Johnson did not have any other conversations with civilians at the incident location about entering § 87(2)(b)'s apartment, and he believed that the initial consent to enter the house extended to the specific apartment too. PO Johnson did not remember whether PO Brown threatened any civilians with breaking § 87(2)(b)'s apartment door. PO Johnson said that while standing at the apartment door, his feet were positioned past the threshold. PO Johnson explained that when § 87(2)(b) opened his apartment door, he and PO Brown entered to prepare a complaint report for the harassment of § 87(2)(b) and because § 87(2)(b) was belligerent and constituted a danger to himself and others. On entering § 87(2)(b)'s apartment, PO Johnson did not intend to arrest him, and only wanted to investigate the incident involving § 87(2)(b). PO Johnson elaborated that § 87(2)(b) was dangerous because he pushed § 87(2)(b) and later another civilian in the officers' presence, and because he was intoxicated. PO Johnson confirmed that § 87(2)(b) did not threaten any of the officers or civilians during this incident. PO Johnson believed that § 87(2)(b) was alone in the apartment as he did not hear anyone else inside, and he was unaware what § 87(2)(b) was doing there and whether he had any weapons. PO Johnson initially stated that § 87(2)(b) was not a flight risk, however, he later said he was a flight risk because he attempted to close the door as PO Johnson and PO Brown entered his apartment (**Board Review 11**).

The AIDED report prepared for this incident referenced that § 87(2)(b) was intoxicated and acting violently (**Board Review 19**).

Consent is only voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. People v. Gonzalez, 39 N.Y. 2d 122 (1976) (**Board Review 21**).

Police may not compel a suspect to open a door by threatening to violate the Fourth Amendment by, "for example, . . . announcing that they would break down the door if the occupants did not open the door voluntarily" (*id.* at 471). Nor does Payton prohibit a warrantless arrest in the doorway; indeed, "the warrant requirement makes sense only in terms of the entry, rather than the arrest [because] the arrest itself is no more threatening or humiliating than a street arrest" (3 Wayne R. LaFare, Search and Seizure § 6.1 [e] [5th ed 2012] [internal quotation marks omitted]) People v. Garvin 30 N.Y.3d 174 (2017) (**Board Review 27**).

An emotionally disturbed person is classified as someone who appears to be mentally ill, temporarily deranged, and conducts himself in a manner which officers reasonably believe is likely to result in a serious injury to himself or others. NYPD Patrol Guide, Section 221-13 (**Board Review 23**).

An emergency entry into a person's apartment must be assessed based on two factors. First, whether officers have reasonable grounds to believe there is an immediate need for their assistance to protect life or property, and second, whether officers have a reasonable basis to associate the emergency with the area to be searched. People v. Rodriguez, 77 A.D. 3d 280 (2019) (**Board Review 22**).

A person is guilty of harassment in the second degree when they strike, shove, kick, or otherwise subject a person to physical contact or threaten to do the same. Harassment in the second degree is a violation. Penal Law S 240.26 (**Board Review 38**).

If the chase of a fleeing suspect is not “immediate and continuous,” the hot pursuit exception to the warrant requirement does not apply. People v. Hunter, 92 A.D. 3d 1277 (2012) (Board Review 26).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation I: Force - Police Officer David Johnson used physical force against § 87(2)(b)

Allegation J: Force - Police Officer Jeffrey Brown used physical force against § 87(2)(b)

Allegation K: Force - Police Officer David Johnson used physical force against § 87(2)(b)

§ 87(2)(b) stated that immediately after entering his apartment, PO Johnson grabbed both of his forearms with his hands, and tripped him with his leg, causing § 87(2)(b) to fall to the ground. § 87(2)(b) noted that his chest and legs made contact with the ground, but he did not strike his head on the floor, walls, or any other objects. While § 87(2)(b) was on the floor, PO Johnson held his arms behind his back, pressed his right knee against the middle portion of his back, and kned him in the left eye with his left knee. These actions resulted in § 87(2)(b)'s back being bruised, and he sustained a laceration to his left eyelid as well as bruising and swelling around his left eye. PO Johnson and PO Brown then placed § 87(2)(b) in handcuffs. § 87(2)(b) acknowledged that he prevented officers from lifting him up by pressing his chest against the floor for approximately three to five minutes, and stated that PO Johnson and PO Brown eventually picked

him up by tightly holding onto his upper arms and pulling him off the floor. As a result of PO Johnson's tight grip, § 87(2)(b) sustained pain and bruising to his left triceps. § 87(2)(b) did not remember whether he physically resisted being taken to the ground, and noted that he may have moved his body evasively because he felt "attacked" (**Board Review 09**).

§ 87(2)(b) was not present for this portion of the incident (**Board Review 10**).

§ 87(2)(b) and the female victim left the country and were not available to the investigation.

PO Johnson stated that while he and PO Brown were in § 87(2)(b)'s apartment, he informed § 87(2)(b) that if he did not receive his identification, he was going to be transported to the stationhouse, and § 87(2)(b) refused to give his ID to PO Johnson. PO Johnson and PO Brown then approached § 87(2)(b) grabbed his arms and placed them behind his back to handcuff him. At this point, § 87(2)(b) threw himself against the wall and began kicking his legs back and forth, in the direction of the officers. PO Johnson noted that § 87(2)(b)'s arms made contact with the wall, but he did not remember whether any other parts of his body hit it. As § 87(2)(b) continued swinging his legs back and forth, he tripped himself, and together with PO Johnson and PO Brown, fell to the floor. Because PO Johnson and PO Brown held § 87(2)(b)'s arms behind his back, § 87(2)(b) fell to the floor face-first, which resulted in an injury to his eye. Following the fall, PO Johnson observed that one of § 87(2)(b)'s eyes was bruised, but he did not observe any other injuries on him. PO Johnson noted that § 87(2)(b) informed him that his eye, and another body part, which PO Johnson could not recall, were hurting.

PO Johnson denied that he or PO Brown forcefully took § 87(2)(b) to the ground, and stated that they "caged" § 87(2)(b) as he was laying on the ground. PO Johnson elaborated that he kneeled alongside § 87(2)(b)'s torso, and that PO Brown positioned himself in a similar manner, on the opposite side of § 87(2)(b). PO Johnson did not remember where his knees were in reference to § 87(2)(b)'s face, and he denied kneeling him in the eye or face. PO Johnson also denied restraining § 87(2)(b) by placing his knee on his back, and he did not observe PO Brown do so. Once § 87(2)(b) was placed in handcuffs, PO Johnson and PO Brown lifted him up by the arms, but PO Johnson denied squeezing § 87(2)(b)'s arm in the process. PO Johnson was shown the AIDED report prepared by him for this incident, which noted that while § 87(2)(b) was being placed in handcuffs, he "threw himself against wall and floor causing injury to self." He was also shown the ISAR prepared by Deputy Inspector Morales, which referenced that "PO Johnson stated it became necessary to take § 87(2)(b) to the ground causing left eye to come in contact with the ground causing a small laceration, contusion, and bruising." PO Johnson initially could not explain the discrepancy in the above-mentioned reports. After speaking to his representative, he noted that he remembered the incident differently than described on the ISAR, and that Deputy Inspector Morales may have mistakenly attributed PO Brown's statement regarding the incident to him (**Board Review 11**).

PO Brown's statement was generally consistent with that of PO Johnson as he described that § 87(2)(b) did not obey officers' commands, physically resisted being handcuffed, and that his evasive body movement resulted in him injuring himself, as he fell down to the ground with the officers. PO Brown elaborated that as he and PO Johnson entered § 87(2)(b)'s apartment, they instructed § 87(2)(b) to place his hands behind his back, which he did not do. PO Brown and PO Johnson reached for § 87(2)(b)'s arms to place him in handcuffs, and § 87(2)(b) raised his arms above his head and twisted his body away from the officers. While PO Brown and PO Johnson held onto § 87(2)(b)'s arms, he twisted and pulled his body away from them, causing the three of them to fall to the ground. PO Brown said that he did not tell Deputy Inspector Morales that a forcible takedown was used on § 87(2)(b) during this incident, and stated that as a result of the fall, § 87(2)(b) sustained a cut on his forehead, which became swollen and started bleeding. PO

Brown acknowledged that he placed his knee on § 87(2)(b)'s hip in the process of handcuffing him, and he denied that he or PO Johnson placed a knee on § 87(2)(b) back, or kned him in the face while he was on the ground. PO Brown noted that § 87(2)(b) refused to get up from the floor, and that he and PO Johnson picked him up from the ground by looping their hands under his biceps and lifting him up. PO Brown did not see PO Johnson squeeze § 87(2)(b)'s triceps while lifting him up from the ground (**Board Review 12**).

Upon reviewing PO Johnson's second BWC video, PO Johnson's BWC falls off his chest as he and PO Brown appear to make physical contact with § 87(2)(b)'s upper body while in his apartment. As the camera falls to the floor, PO Johnson and PO Brown can be briefly seen standing on each side of § 87(2)(b) as he holds his hands together in front of his torso. At 00:24 minutes on the recording, § 87(2)(b) and the officers can be seen leaning to the left, back to the center, and eventually move out of the frame of the camera. At approximately 00:36 minutes, as § 87(2)(b) PO Johnson, and PO Brown are no longer captured in the recording, a loud "bang" sound can be heard, followed by § 87(2)(b) yelling loudly. At 07:00, PO Brown is briefly observed lifting § 87(2)(b) up by his arms and then the camera pans to the left. At 10:48, § 87(2)(b) is inside the RMP and hits his head on the divider separating the front and back seat (**Board Review 02**).

PO Borden's BWC recording shows § 87(2)(b) speaking with Deputy Inspector Morales about the incident while at the 42nd Precinct stationhouse. At approximately 11:00 minutes on the recording, Deputy Inspector Morales asks § 87(2)(b) to explain what happened to his eye, and § 87(2)(b) answers in Spanish that he was struck with a fist. § 87(2)(b) then hits his foot against the floor on few occasions and states to Deputy Inspector Morales, "with this one" in Spanish (**Board Review 07**).

Photographs of § 87(2)(b) taken by § 87(2)(b) on July 30, 2018, show a small laceration, bruising, and swelling of his left eyelid, bruising on his left arm, and redness on the middle portion of his back (**Board Review 35**).

PO Johnson's and PO Brown's TRI reports prepared for this incident noted that they used force to take § 87(2)(b) to the ground as he did not allow himself to be handcuffed. The TRIs referenced that § 87(2)(b) "wrestled/grappled" and "pushed/shoved" officers, that his injury resulted out of an intentional "forcible takedown." (**Board Review 17 and 18**).

The AIDED report completed by PO Johnson noted that § 87(2)(b) was suspected of being under the influence of alcohol and placed himself in a dangerous situation. The report referenced that "acting violent upon being placed in cuffs AIDED threw himself against wall and floor causing injury to self" (**Board Review 19**).

The ISAR prepared by Deputy Inspector Morales noted that § 87(2)(b) resisted arrest and that he alleged that officers "punched him in the face with fists, knees, and stomped on his face." It also mentioned that § 87(2)(b) who was interviewed by Deputy Inspector Morales, reported that in the process of arresting § 87(2)(b) PO Johnson took him down to the ground "striking his left eye to the ground." Lastly, the ISAR referenced that as per PO Johnson, "it became necessary to take § 87(2)(b) down to the ground causing left eye to come in contact with the ground causing a small laceration, contusion, and bruising. He was then handcuffed and transported to the RMP" (**Board Review 28**).

The Notice of Claim filed by § 87(2)(b) for this incident referenced that officers of the 42nd Precinct brutally beat and assaulted him, which resulted in injuries to head, neck, back and face (**Board Review 29**).

§ 87(2)(b)'s medical records noted that he obtained medical treatment at § 87(2)(b) on § 87(2)(b). § 87(2)(b) reported "diplopia" (double vision) and was diagnosed with pain to the left eye caused by trauma. His medical records noted that he sustained "left periorbital hematoma" and "swelling" and that his skull was not injured (**Board Review 30**).

Force may be used when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide, Section 221-01 (**Board Review 31**).

§ 87(2)(g)

§ 87(2)(g)

Allegation L: Discourtesy - An officer spoke discourteously to § 87(2)(b)

Upon reviewing PO Johnson's second BWC recording of this incident, at 02:41 minutes, PO Brown picks up PO Johnson's BWC and hands it to PO Johnson. The BWC camera does not show a steady image as PO Johnson adjusts it on his chest, and § 87(2)(b) can be heard screaming while a lot of voices are heard referencing the "ID." At approximately 02:53, PO Johnson or PO Brown is heard yelling, "Don't fucking touch me!" At 03:01, PO Brown or PO Johnson instructs an unspecified party, "Don't touch me" and holds the BWC camera in the palm of his hand. The camera is no longer attached to his chest (**Board Review 02**).

No civilians alleged this discourtesy and no officers acknowledged it.

P.G. 200-02 says that officers must treat civilians with courtesy, compassion, professionalism and respect (**Board Review 41**).

Language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation. NYPD disciplinary case# 2017-17276 (**Board Review 37**).

§ 87(2)(g)

§ 87(2)(g)

Allegation M: Force - Police Officer Victor Gonzalez-Hernandez used physical force against

§ 87(2)(b)

Upon reviewing PO Gonzalez-Hernandez's BWC, PO Gonzalez-Hernandez enters the house and runs inside of the apartment at 00:45 minutes. The unknown female is standing to the left of the door and PO Johnson is holding § 87(2)(b) on the ground. PO Brown is standing behind PO Johnson. At 00:50, PO Gonzalez-Hernandez pushes § 87(2)(b) backward while telling him to back up. § 87(2)(b) takes a few steps back and is seen holding up a phone in his hand. PO Gonzalez-Hernandez and another officer then place themselves between the other civilians and § 87(2)(b) and instruct them to keep away **(Board Review 3)**.

No civilians or officers made this allegation.

Force may be used when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances **(Board Review 31)**.

§ 87(2)(g)

Allegation N: Force - An officer used physical force against § 87(2)(b)

Upon reviewing PO Johnson's second BWC video, at 08:01 minutes, PO Johnson opens his vehicle's rear-left door, PO Brown removes a backpack from the seat, and PO Johnson places § 87(2)(b) inside of the vehicle. At 08:11 minutes, § 87(2)(b) gets up from the seat and attempts to run out of the open door of the vehicle while yelling. An officer places his hands-on § 87(2)(b)'s chest and forcefully pushes him back inside the vehicle. § 87(2)(b)'s back make contact with the rear seat of the vehicle, but he then rolls onto the floor between the seats as PO Johnson closes the door **(Board Review 2)**.

No civilians or officers alleged this allegation.

Force may be used when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances **(Board Review 31)**.

§ 87(2)(g)

§ 87(2)(g)

Allegation O: Abuse of Authority – Police Officer David Johnson failed to obtain language interpretation services for § 87(2)(b)

Allegation P: Abuse of Authority - Police Officer Jeffrey Brown failed to obtain language interpretation services for § 87(2)(b)

Allegation Q: Abuse of Authority - Police Officer David Johnson failed to obtain language interpretation services for § 87(2)(b)

Allegation R: Abuse of Authority - Police Officer Jeffrey Brown failed to obtain language interpretation services for § 87(2)(b)

Allegation S: Abuse of Authority - Police Officer David Johnson failed to obtain language interpretation services for § 87(2)(b)

Allegation T: Abuse of Authority - Police Officer Jeffrey Brown failed to obtain language interpretation services for § 87(2)(b)

§ 87(2)(b) said that there was no language barrier between himself and the officers. However, § 87(2)(b) requested that his CCRB interview be conducted in Romanian or Spanish as he was not comfortable providing a statement in English (**Board Review 09**).

PO Borden's BWC showed Deputy Inspector Morales attempting to communicate with § 87(2)(b) for several minutes in English, but § 87(2)(b) provided brief incoherent answers. At approximately 10:00 minutes, Deputy Inspector Morales realized that § 87(2)(b) spoke Spanish and begins questioning him in that language. Throughout the questioning, § 87(2)(b) appears to be intoxicated (**Board Review 07**).

§ 87(2)(b) and the female victim left the country and were not available to the investigation.

In his 911 call at the end of the incident, § 87(2)(b) speaks to the operator in broken Spanish, saying that he needed an ambulance right away because his "cousin was dead." The operator asks additional questions and confirms that the individual requiring the ambulance was conscious and breathing, but needed help fast. § 87(2)(b) told the operator that he did not speak much Spanish. She asked in Spanish whether he spoke English and he replied that he spoke Romanian and was from Romania (**Board Review 41 and 42**).

Upon review of PO Johnson's first BWC video, at 04:08, as PO Johnson's BWC camera faces the adult female and a child standing by the entrance to the house, PO Johnson asks the female, "You guys understand what we're saying?" The female repeatedly replies, "We speak Romanian," and the child nods his head and replies, "Yeah." PO Johnson then instructs the child in English, "You understand? Tell her what I'm saying about ID." The child can be heard speaking in Romanian to the female in front of PO Johnson. The female replies to the child in the same language. At 06:15, PO Johnson stops in front of a white door on the second floor of the house, and PO Brown, who is on his right, can be seen holding handcuffs. At the same time, PO Johnson states, "figure it out, I want ID, I'm not playing games."

At 06:24, § 87(2)(b) says "Excuse me" with a thick accent, and moves in front of the apartment door. As he attempts to speak to the officers in English, PO Brown can be heard telling him, "Do you understand what I'm saying about ID? ID now." At the same time the female, who is not captured in the frame of PO Johnson's camera, attempts to speak to PO Brown in Romanian. PO Brown replies to the female, "Give me his ID, his ID, I want his ID." The female begins speaking in Romanian and enters the apartment.

At 06:54 minutes, § 87(2)(b) repeatedly states, "Por favor" to PO Johnson, and PO Johnson answers him, "I don't care. I don't wanna hear it man." PO Brown asks § 87(2)(b) "What's going on? Just give me the identification, that's it." § 87(2)(b) again states, "Por favor," At 07:27, § 87(2)(b) asks PO Brown in Spanish, "Do you speak Spanish? I don't understand much Spanish." At 7:30 minutes, the female exits the apartment. PO Brown tells the female, "His ID! His ID!" while pointing toward the door. As the female points to

herself and appears confused, PO Johnson begins yelling, "His ID! That's why we're here." The female and § 87(2)(b) being speaking to each other in Romanian. At 07:58 minutes, the female turns toward PO Brown, who is not captured in the frame of the recording, and speaks to him in English and Romanian (**Board Review 01**).

§ 87(2)(b) and the female left the country and were not available to the investigation.

PO Johnson said that multiple individuals at the location including § 87(2)(b) and the unknown female attempted to speak to him. PO Johnson said that § 87(2)(b) spoke English well and understood his commands. PO Johnson also said the unknown woman spoke to him in English and understood that he wanted § 87(2)(b)'s ID. PO Johnson said that § 87(2)(b) and the female spoke to each other in a language he did not know.

PO Brown said that § 87(2)(b) spoke English well, but with an accent and understood commands.

The BWC footage showed that throughout the course of this incident, PO Johnson and PO Brown interacted with numerous individuals who possessed a limited comprehension of English. Despite this, there was no indication that PO Brown or PO Johnson took any steps to obtain interpretation services. Instead, PO Brown and PO Johnson merely repeated themselves in English, held up handcuffs, made additional threats, and asked a juvenile, (whose ability to communicate in English was also not confirmed) to interpret their orders. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PG 212-90 says that when officers encounter civilians with Limited English Proficiency, they should present the individual with activity log insets entitled, "I speak..." and "Primary Language Identifier" and encourage the individual to indicate the language needed. Officers should then contact the Language Line Service for assistance or ascertain the individual's country of origin and then contact the Operations Unit to research languages spoken in that country. If a bilingual member of service is not readily available, but a bilingual member of the public is available, officers should determine whether they are willing to interpret and whether their use is appropriate or use their department cell phones to contact the Language Line Service. Whenever possible, a child should not be used as an interpreter for any type of police incident (**Board Review 24**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (**Board Review 32** and **Board Review 14**).
- PO Johnson has been a member of service for four years and has been a subject in two other CCRB complaints involving four allegations, none of which have been substantiated § 87(2)(g) (**Board Review 33**).
- PO Brown has been a member of service for three years and has been a subject in one prior CCRB complaint involving two allegations, none of which have been substantiated § 87(2)(g) (**Board Review 34**).

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation due to § 87(2)(b)'s civil lawsuit against the City of New York, the NYPD, and the respective officers involved in this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
- As of § 87(2)(b), a Notice of Claim was filed on § 87(2)(b)'s behalf by his civil attorney § 87(2)(b). The Notice of Claim summarized this incident and noted that § 87(2)(b) was a victim of excessive force and was “otherwise brutally beat hit assaulted” and sustained injuries (**Board Review 37**).
- On September 23, 2019, a FOIL request to the Office of the Comptroller confirmed that no Notices of Claim were filed by § 87(2)(b) for this incident (**Board Review 44**).

Squad No.: 10

Investigator:	_____	<u>INV. WORONIECKI</u>	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	<u>IM RIGIE</u>	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date